

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ELIZABETH M. THORP and STEPHEN N. THORP

Appeal No. 1997-3280
Application No. 08/212,065

ON BRIEF

Before CALVERT, FRANKFORT, and MCQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 7, 8, 10 and 11 as amended subsequent to the final rejection in a paper filed July 30, 1996 (Paper No. 15). Claims 1 through 6 and 9 have been canceled.

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Appellants' invention relates to a composite structure including an electroluminescent light source with a retroreflective sheet superimposed on the light source, and a translucent or transparent fluorescent film superimposed thereon. The fluorescent material can also be incorporated in the retroreflective material and superimposed on the light source. This composite provides both enhanced daytime and nighttime visibility, even in the event of a failure of the light source.

Claims 10 and 11 are representative of the subject matter before us on appeal and a copy of those claims, reproduced from the Appendix of Appellants' Brief, is attached to this decision.

The prior art references of record relied upon by the examiner in rejecting claims 7, 8, 10 and 11 are:

Spencer (Spencer '457)	5,243,457	Sep. 7, 1993
Spencer et al. (Spencer '783)	5,300,783	Apr. 5, 1994
		(filed Sep. 30, 1992)

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Claims 7, 8, 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Spencer '783 or¹ Spencer '457.

Rather than attempt to reiterate the examiner's full statement with regard to the above noted rejections and conflicting viewpoints advanced by the examiner and appellants regarding the rejections, we make reference to the Examiner's Answer (Paper No. 20, mailed March 31, 1997) for the reasoning in support of the rejections, and to Appellants' Brief (Paper No. 19, filed December 27, 1996) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims,

¹ In the final rejection, the examiner applied the two Spencer references as "Spencer et al. '783 and Spencer '457." However, by the substance of the examiner's rejection, it appears that the examiner's intention was for the rejection to state "Spencer et al. '783 or Spencer '457" where both references are used in the alternative instead of cumulative. Therefore, we have interpreted the examiner's rejection to read, "Spencer et al. '783 or Spencer '457."

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to the applied prior art references, and to the respective positions as set forth by the appellants and the examiner.

With regard to the examiner's 35 U.S.C. § 103(a) rejection based on Spencer '783 or Spencer '457, we find that the examiner has failed to established a prima facie case of obviousness. Since Spencer '783 is the more comprehensive of the two references, we will first address the rejections with regard to this Spencer reference. The examiner's position is that Spencer '783 discloses the claimed composite material in Figure 5 having an electroluminescent light source 62 (Figure 2), wherein this light source is taught to be interchangeable with the phosphorescent material 108 of Figure 5 (col. 9, lines 26-30). The examiner calls attention to the phrase in Spencer '783 stating that "[t]hroughout this disclosure, the expression 'luminous material' or 'luminous composition' is intended to include any material or composition which has phosphorescent, fluorescent and/or auto luminescent properties" (col. 2,

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lines 53-58). This phrase is apparently relied upon by the examiner as a motivation for using fluorescent film in either of the Spencer patents. It is also the examiner's position that a second layer of phosphorescent material is provided along with a retroreflective material. The examiner further explains his position (answer, pg. 5) by specifying that "106 [sic] discloses a phosphorescent material and 100 discloses a retroreflective material," thereby meeting the structural limitations of appellants' independent claim 11.

We find that the examiner has misinterpreted the Spencer references. As stated in the answer on page 5, it is examiner's position that:

Appellants [sic] claimed "fluorescent, retroreflective film" is disclosed in Fig. 5, 102, where 106 [sic] discloses a phosphorescent material and 100 discloses a retroreflective material. This structure meets Appellants [sic] claim limitations because Spencer discloses in col. 8, lines 5-9 that "a second layer 106 [sic] of phosphorescent material is attached or joined to the underlying surface of prism-like formation and is **generally coextensive with the first layer 102.**"

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The examiner, twice, mislabels the phosphorescent layer as 106 instead of 108 which appears to have led to the misreading of the reference, thereby resulting in the final rejection. It is understandable how the examiner could have misinterpreted the reference numeral due to the poor quality of the text in the copy used by the examiner. However, the official text of Spencer '783 shows the correct element numbers. Clearly, element 106 of Spencer is discussed as being a smooth light transmittive surface of the retroreflective layer 102.

Appellants argue (brief, pg. 5) that Spencer's invention "does not include a fluorescent film superimposed on or incorporated into the retroreflective member. Further, there is nothing in the reference to suggest such superimposing or incorporating and no secondary reference is cited to provide such a suggestion." We agree with appellants. We do not find that Spencer '783 discloses an electroluminescent light source with a retroreflective sheet superimposed on the light source and a fluorescent film superimposed on the retroreflective sheet, but merely the retroreflective material superimposed on

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a electroluminescent light source, as shown in both Figures 2 and 5 of Spencer '783. Likewise, Spencer '457 provides no teaching or suggestion of a composite structure of the specific construction required in appellants' claim 11 on appeal.

Therefore, the examiner's rejections of appellants' claim 11 will not be sustained. It follows that the examiner's rejection of claims 7 and 8 which depend from claim 11, will also not be sustained.

Appellants provide separate arguments (brief, pp. 8-9) with respect to independent claim 10, stating that fluorescent material incorporated into the retroreflective material and superimposed on an electroluminescent light source is not taught by the applied Spencer patents. We agree with appellants that the examiner's rejection has failed to establish a prima facie case of obviousness with respect to claim 10 since the Spencer patents do not disclose or suggest a fluorescent, retroreflective film, superimposed on a light source.

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In summary, we cannot sustain the examiner's rejection of claims 7, 8, 10 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Spencer '783 or Spencer '457.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JOHN P. MCQUADE)	
Administrative Patent Judge)	

CEF/sld

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Claims

10. A composite structure comprised of an electroluminescent light source, and superimposed on said source, a fluorescent, retroreflective film.

11. A composite structure comprised of an electroluminescent light source and, superimposed on said light source, a retroreflective sheet and, superimposed on said retroreflective sheet, a translucent or transparent fluorescent film.

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APJ FRANKFORT

APJ MCQUADE

APJ CALVERT

REVERSED

Prepared: March 2, 2001